

No. 10791

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

DANIEL P. WHITE, an individual doing business as GLOBE
FREIGHT SERVICE,

Appellant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COM-
PANY, a corporation,

Appellee.

BRIEF OF APPELLEE.

JONATHAN C. GIBSON,
WILLIAM F. BROOKS,

560 South Main Street, Los Angeles 13,
Attorneys for Appellee.

FILED

TOPICAL INDEX.

	PAGE
Question presented	1
Argument	3
I.	
Section 419 shows on its face that it does not affect the jurisdiction of suits for undercharges of a railroad.....	3
II.	
The legislative history of Section 419 demonstrates that it does not affect suits for collection of rates of railroads.....	9
Conclusion	19

TABLE OF AUTHORITIES CITED.

CASES.	PAGE
Acme Fast Freight v. United States, 309 U. S. 638, 60 S. Ct. 810, 84 L. Ed. 993.....	11
Acme Fast Freight, Inc., et al., 2 M. C. C. 415, 8 M. C. C. 211, 17 M. C. C. 549.....	11
Pampanga Sugar Mills v. Trinidad, 279 U. S. 211, 73 L. Ed. 665	8
Porto Rico Ry. etc. Co. v. Mor, 253 U. S. 345, 64 L. Ed. 944....	5
Puget Sound Elec. Ry. v. Benson, 253 Fed. 710.....	5

MISCELLANEOUS.

House Report No. 1172, 77th Cong., 1st Sess.....	9, 13
House Report No. 2066, 77th Cong., 2d Sess.....	16
House Report No. 3684, 77th Cong., 1st, Sess.....	12, 13, 17
Senate Report No. 132, 77th Cong., 1st Sess.....	16
Senate Resolution 146.....	12

STATUTES.

Interstate Commerce Act, Sec. 203(a), para. 14.....	14
Interstate Commerce Act, Sec. 405(b).....	7
Interstate Commerce Act, Sec. 406(c).....	7
Interstate Commerce Act, Sec. 406(d).....	8
Interstate Commerce Act, Sec. 406(f).....	8
Interstate Commerce Act, Part II, Motor Carrier Act of 1935 (49 U. S. C. A. 301-327).....	10
Interstate Commerce Act, Part IV, Sec. 419 (49 U. S. C. A. 1019).....	1, 2, 3, 4, 5, 8, 9, 10, 12, 15, 16, 17, 18 19
Public Law 558, 77th Cong., 2d Sess., Chap. 318, 56 Stat. 298....	5
Senate Bill No. 210, 77th Cong., 1st Sess.....	12, 13, 16
Senate Bill No. 3665.....	12
Senate Bill No. 3666.....	12

TEXTBOOKS.

50 American Jurisprudence, p. 258.....	5
50 American Jurisprudence, p. 259.....	5, 8
Webster's New International Dictionary, 2d Ed., Unabridged.....	6

No. 10791

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

DANIEL P. WHITE, an individual doing business as GLOBE
FREIGHT SERVICE,

Appellant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COM-
PANY, a corporation,

Appellee.

BRIEF OF APPELLEE.

Question Presented.

There is in reality but a single question presented on this appeal, namely whether the courts have been deprived of jurisdiction of an action by a railroad against a forwarder to recover undercharges of the rates of the railroad by Section 419 of Part IV of the Interstate Commerce Act, 49 U. S. C. A. 1019.

This question was not seriously presented or considered in the lower court. Quite true there was a passing mention of the subject during the course of argument on

motion for a new trial when counsel for the unsuccessful defendant in a similar action, whose motion for a new trial was being argued at the same time, referred to Section 419 as having a possible bearing on the right of the railroad to maintain a suit for undercharges, but made no firm contention that the section was governing. Otherwise, the question now being presented here for review was not presented for decision,¹ and the District Court made no specific findings of fact or conclusions of law on the subject. (R. 12) The Court quite evidently considered the point too flimsy for serious consideration.

Aside from the assignments attacking the jurisdiction of the Court, no error is assigned in any of the findings of fact or conclusions of law below, and it is conceded that if the District Court had jurisdiction of the cause of action, its judgment must be affirmed.

¹In fairness it should be noted that Appellant's present Counsel was not in the case at the time and did not participate in this or in any other proceeding below except in connection with the present appeal.

ARGUMENT.

I.

Section 419 Shows on Its Face That It Does Not Affect the Jurisdiction of Suits for Undercharges of a Railroad.

The present suit is for the collection of undercharges in the rates of a railroad. The contention of the appellant is that the District Court was deprived of jurisdiction over such a suit by Section 419.

As set out in the United States Code this section reads as follows:

“No person shall be subject to any punishment or liability under the provisions of this chapter and chapters 1, 8, and 12 of this title on account of any act done or omitted to be done, prior to the effective date of this chapter, in connection with the establishment, charging, collection, receipt, or payment of rates of freight forwarders, or joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to this chapter and chapters 1, 8, and 12 of this title.” (49 U. S. C. A. 1019.)

The appellant makes no contention that the present suit involves joint rates or divisions between freight forwarders and common carriers by motor vehicle. It confines its contention to the single proposition that the suit is for the collection of rates of freight forwarders growing out of shipments moving prior to the passage of the statute and is therefore one of which the Courts have been deprived of jurisdiction. The phrase “rates of

freight forwarders," the appellant contends, means not the rates charged by such forwarders for their service to patrons, but the rates paid by such forwarders to rail carriers subject to Part I of the Interstate Commerce Act for the transportation of freight of a forwarder. Such rates, it says, were as much the rates of the shipper as they were rates of the carrier, as much the rates of the forwarder as the rates of the railroad.

Appellant argues that prior to the enactment of Section 419 there were no rates of freight forwarders filed with the Interstate Commerce Commission and subject to its regulation under Part I of the Act except such rates as were filed by rail carriers and made effective as to shipments of freight forwarders as well as of other shippers. Apparently appellant contends that the phrase "rates of freight forwarders" is modified by the concluding phrase of Section 419 reading "subject to this chapter and chapters 1, 8, and 12 of this title" and the provision is to be read as if it granted immunity for things done in connection with freight forwarder rates subject to this chapter and chapters 1, 8 and 12 of this title, or, what amounts to the same thing, "subject to Parts I, II, III, and IV of the Interstate Commerce Act."

Appellant stresses the fact that since railroad rates are the only rates subject to Part I, and since all of the language of Section 419 must be given effect, the term "rates of freight forwarders" must, as there used, mean those rates applicable to the shipments of freight forwarders over the lines of rail carriers subject to Part I, since there is nothing else it could mean.

But the concluding phrase of Section 419 really means nothing more than "subject to the Interstate Commerce

Act” because that act consists of Parts I, II, III, and IV, which in turn consist of Chapters 1, 8, 12 and 13 of Title 49 of the United States Code. This is borne out by the version of Section 419 as set forth in the official print of the statute as passed by Congress and signed by the President, Public Law 558, 77th Congress, Chapter 318, Second Session, 56 Stat. 298, which agrees word for word with the section as set forth in Supplement to the Interstate Commerce Act Revised to August 7, 1942, United States Government Printing Office, Washington, 1942. In both of these places Section 419 reads as follows:

“Section 419. No person shall be subject to any punishment or liability under the provisions of this Act on account of any act done or omitted to be done, prior to the effective date of this part, in connection with the establishment, charging, collection, receipt, or payment of rates of freight forwarders, or joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to this Act.”

The phrase “subject to this act” or “subject to this chapter and chapters 1, 8 and 12 of this title” follows immediately after the phrase “common carriers by motor vehicle.” The general rule is that in construing a statute, qualifying words, phrases, or clauses are ordinarily confined to the last antecedent or to the words and phrases immediately preceding. *Puget Sound Elec. Ry. v. Benson*, 9 Cir., 253 Fed. 710; 50 *Amer. Juris.* 258. Force is lent to this construction where, as here, the two phrases are not separated by a comma. *Porto Rico Ry. etc. Co. v. Mor*, 253 U. S. 345, 64 L. Ed. 944; 50 *Amer. Juris.* 259.

While these rules of construction are not controlling in all cases, they do apply where, as here, there is nothing in the statute or in the surrounding circumstances requiring a different view. In the instant case, to regard the phrase "subject to this act" as referring to the preceding phrase, "common carriers by motor vehicle" is to accept the natural and logical meaning of the words employed, and to avoid the strained construction which would torture the term "rates of freight forwarders" into meaning the rates of other persons—the rates of railroads.

The construction placed upon the statute by the appellant does violence to the language employed. The preposition "of" in its most general sense means "proceeding from, belonging to, relating to, connected with, concerning." One of its more special senses is "indicating origin, source, or the like; thus * * * from as possessor, giver, seller, loser, etc." (Webster's New International Dictionary, 2d Edition, Unabridged.)

The prices of the butcher, the baker, and the candlestick maker are those for which they sell their wares, not those for which they procure supplies from others. The fees of a lawyer are what he charges his clients for legal services, not what he pays to other professional men when he has occasion to seek their services. The rates of a gas company, an electric light company or a water company, are the charges made by each of these utilities to its patrons, not what it pays to the other utilities for some commodity or service. So the rates of a railroad are the charges to its shippers, whether they be forwarders or other persons. So also the rates of freight forwarders are the charges they make to those who use their services. This is the plain literal meaning of the words of common speech employed in the statute.

It is an interpretation which is supported by the principle of *noscitur a sociis*. The section consists of a single sentence giving immunity for things done in connection with "rate of freight forwarders, or joint rates or divisions between freight forwarders and common carriers by motor vehicle." Joint rates between freight forwarders and common carriers by motor vehicle are the charges made to their patrons for joint service, for transportation in which both the forwarder and the motor carrier participate under an agreement naming a single rate to be exacted from shippers. Similarly, divisions between freight forwarders and common carriers by motor vehicle represent a distribution of the proceeds of the joint charges made to patrons. None of the terms deal with what the forwarders or motor carriers pay for the goods or services that they buy. They are all confined to charges made to patrons or a division of the resulting proceeds.

This interpretation is likewise supported by the circumstance that in other sections of Part IV of the act closely similar phrases are used in the same sense, and as denoting charges made by forwarders against their patrons. For example, it is provided "*All of rates and charges of freight forwarders* for service subject to this part shall be stated in lawful money of the United States." Section 405 (b). "In any proceeding to determine the justness or reasonableness of any *rate or charge of any freight forwarder*, for service subject to this part, there shall not be taken in consideration or allowed as evidence or elements of value of the property of such forwarder either goodwill, earning power, or the permit under which such forwarder is operating." Section 406 (c). "In the exer-

cise of its power to prescribe just and reasonable *rates and charges of freight forwarders* * * * the Commission shall give due consideration * * * to the inherent nature or freight forwarding * * *.” Section 406 (d). “Whenever in any investigation under this part * * * there shall be brought in issue *any rate, charge, classification, regulation, or practice of any freight forwarder*, made or imposed by authority of any State, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified * * *.” Section 406 (f). (Italics ours.)

In all of these passages the words “rates or charges of freight forwarders” or the closely similar terms employed are quite obviously used in the sense of rates or charges exacted from the public by the forwarders. Since the general rule requires that words used in one place in legislative enactments should be regarded as having the same meaning in other places in the statute, it is reasonable to conclude that the term “rates of freight forwarders” in section 419 has reference to the charges made to patrons, rather than to payments made by forwarders to other persons. *Pampanga Sugar Mills v. Trinidad*, 279 U. S. 211, 73 L. Ed. 665; 50 *Amer. Juris.* 259.

The statute on its face, therefore, must be regarded as conferring immunity only with respect to the rates which forwarders charged their patrons prior to the effective date of Section 419. It cannot, consistently with the literal meaning of its definitely plain and unambiguous terms, be construed as in any way affecting a suit such as the one at bar, for the collection of undercharges in the rates of a common carrier by railroad, even where those rates have been exacted for transportation service performed by the railroad for a forwarder.

II.

**The Legislative History of Section 419 Demonstrates
That It Does Not Affect Suits for Collection of
Rates of Railroads.**

The appellant contends that its construction of Section 419 is supported by the legislative history of the statute. He describes the situation of forwarders before and after enactment of the statute, and he quotes from House Report No. 1172, 77th Congress, First Session, one of the Committee reports on the bill.

But the legislative history of Section 419 affords no support for the position of the appellant. On the contrary, it shows that the section was enacted for the specifically limited purpose of affording relief from liability in connection with the establishment, collection, etc., of the rates charged by freight forwarders to their patrons and joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to the Interstate Commerce Act. It shows that Congress had not the slightest intention of affecting the jurisdiction of the courts over suits to collect undercharges in the rates of railroads whether filed against forwarders or other users of rail service.

The purpose of Section 419, as expressly stated in committee reports on the bill, was to relieve freight forwarders and connecting common carriers by motor vehicle from the consequences of far-reaching irregularities in connection with their charges to the public and in connection with the division of these charges between them which occurred between the passage of Part II of the Interstate Commerce Act in 1935, and the passage of Part IV in 1942. No irregularities in the payment by

forwarders for rail service were brought to the attention of Congress, and there is not the slightest indication anywhere in the legislative history of Section 419 of an intention on the part of Congress to relieve forwarders of the payment of railroad undercharges.

The business of freight forwarders is to collect small shipments of goods, consolidate them and then re-ship them in bulk over the lines of other common carriers—by railroad, by water, and by motor vehicle. When they use the services of rail or water carriers, they pay the regularly published tariff rates just as any other shipper. In their railroad operations their opportunity for profit is derived from the spread between the carload rates under which they ship and the less than carload rates which their patrons would have to pay if they tendered their shipments directly to the railroads. The forwarders attract patronage by offering rates lower than the less than carload but higher than the carload rates of the railroad. In their water carrier operations an analogous situation obtains. In the highway transportation field, the arrangements of forwarders with the motor carriers have had a checkered history in recent years.

Before the passage of the Motor Carrier Act of 1935, Part II of the Interstate Commerce Act (49 U. S. C. A. 301-327), the amount of compensation paid by forwarders to motor carriers for transporting freight was determined by private contract. The Motor Carrier Act required carriers subject to regulation to file tariffs with the Interstate Commerce Commission, directed the rates named in such tariffs to be strictly observed, and prohibited any deviation therefrom under severe penalties. The new legislation made it impossible for a motor carrier subject to the Act to continue the former practice of entering

into private contracts governing the rates at which they would transport forwarder traffic. The forwarders, however, concluding that they were common carriers subject to the Act, filed their tariffs with the Commission and entered into agreements with various motor carriers subject to the Act for the division of joint rates as set forth in the tariffs. The motor carriers, acquiescing in this view, quite generally filed with the Commission concurrences in the forwarder tariffs.

These arrangements, however, were upset by the decision of the Interstate Commerce Commission in *Acme Fast Freight, Inc., et al.*, 2 M. C. C. 415 (1937), 8 M. C. C. 211 (1938), 17 M. C. C. 549 (1939), that forwarders were not subject to the Motor Carrier Act of 1935, and that they did not have the right to file tariffs with the Commission or to enter into joint rates with motor carriers subject to the Act. The Commission ordered stricken from its files the tariffs thus found to be illegal. The decision of the Commission was upheld by a three-judge court in *Acme Fast Freight v. United States* (1940), 30 Fed. Supp. 968, and the decision was affirmed by the Supreme Court in *Acme Fast Freight v. United States* (1940) 309 U. S. 638, 60 S.Ct. 810, 84 L. Ed. 993. The Commission rendered similar decisions in other cases. In all of such cases, however, it postponed the effective date of the orders from time to time to permit those affected to seek relief.

These decisions were a serious blow to the forwarders and to the common carriers by motor vehicle subject to the Act who had maintained joint rates with the forwarders. Both groups of carriers were exposed to severe liabilities, civil and criminal. The forwarders had

established, published and collected from their patrons rates under an unauthorized and illegal procedure. Both the forwarders and the motor carriers had established illegal joint rates and divisions. There was grave danger that the forwarders might be held liable to the truckers who had handled freight for them for the difference between the amounts of the charges as computed according to the motor carrier tariffs legally on file with the Commission and the amounts of the compensation actually paid in accordance with the invalid joint rate and division tariffs. Many suits of this nature were threatened and some were actually brought against the forwarders. Unless they could secure relief they faced the danger of financial ruin.

They appealed to Congress for relief. The result was the passage of Part IV of the Interstate Commerce Act, approved May 16, 1942, in which Congress provided for the regulation of forwarders and included in Section 419 a provision for relief from the past irregularities.

The legislative history as thus briefly outlined is borne out not only in the cases already cited, but in the various committee reports in the Senate and the House.

Part IV of the Interstate Commerce Act was Senate Bill 210 of the 77th Congress, 1st Session. There were no hearings on this bill. However, S.210 was merely a reintroduction, in substance, of Senate Bills 3665 and 3666, which had been introduced in the 76th Congress but not acted on. Hearings were held on S. 3665 and 3666 and are embraced in the transcript of the hearings on Senate Resolution 146.

The House counterpart of S. 210 was H. R. 3684, introduced by Mr. Lea at the 77th Congress, 1st Session.

Hearings were held on this bill. However, the House Committee on Interstate and Foreign Commerce substituted S. 210 with amendments for H. R. 3684 and filed its report on that basis. Because of the amendments proposed by the House Committee a conference committee was appointed and it made certain modifications of the House amendments, and S. 210 as thus amended became Part IV of the act.

The appellant has quoted a few paragraphs from House Report No. 1172, 77th Congress, 1st Session. But these passages are either altogether irrelevant or are couched in language of such generality as to afford no assistance to the solution of the present problem. Other portions of that report, however, are both relevant and specific and disclose the real purpose of Congress in enacting Section 419 to be as already outlined. For instance, the report states:

“Forwarders have been in operation for many years, but their greatest growth and development came with the advent of the motor truck as a transport agency. * * *

“Prior to the passage of the Motor Carrier Act, 1935, the forwarders employed the services of the motor carriers under special contractual arrangements, much as did the express companies in their inception. * * *

“When the Motor Carrier Act became effective as to tariffs of motor carriers, in 1936, the contractual arrangements were, as a result thereof, abrogated. The forwarders saw in this no threat to their operations, however, for they assumed, as did many others at that time, that Congress had intended to and did provide for the regulation of forwarding

carriers in the Motor Carrier Act. The language in the act which seemed to indicate such an intent was contained in Section 203(a), paragraph 14, as follows:

“‘The term “common carrier by motor vehicle” means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has hereofore been subject to Part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to Part I.’

“Freight forwarders accordingly filed their tariffs with the Interstate Commerce Commission and, pursuant to the provisions of the act, entered into arrangements with their connecting truck operators under which the truck operators filed concurrences in the tariffs of the freight forwarders as joint operators. In other words, the forwarders substituted a joint rate arrangement for the previously existing contractual arrangement, and generally, the same basis of compensation for the services rendered by the trucks as had been in existence prior to the enactment of the Motor Carrier Act was continued.

“Making a test case of the application of Acme Fast Freight, Inc., a forwarder, for a certificate under the act, the Commission, in 1937, in docket MC-2200, held that forwarding companies were not included within the definition above quoted and were, therefore, not regulated by the Motor Carrier Act, and later ordered Acme’s tariffs stricken from the

files. Other forwarding companies with tariffs on file with the Commission were later joined in an all-inclusive proceeding under docket *ex parte* No. MC-31, and their tariffs were likewise rejected.

“Recognizing the chaotic condition which would be created, however, if its orders in these cases became effective before Congress had an opportunity to consider and enact appropriate legislation relating to freight forwarders, the Commission postponed the effectiveness of such orders. During the time Congress has had such legislation under consideration, as outlined above, the Commission from time to time made further postponements. * * *.”

Dealing specifically with the section now numbered 419, the House report continues:

“As has been previously explained in this report, freight forwarders and common carriers by motor vehicle subject to Part II have been for a number of years operating under joint rates, which, by reason of the decision of the Commission in the *Acme case*, and in the other freight forwarder cases, they probably had no authority to establish and observe, even though the Commission’s orders in those cases have not yet become effective. As a result of this, various persons may have subjected themselves to penalties and liabilities under Federal statutes, even though during the period of operation under such joint rates there may have been no deliberate intention to violate the law, and no way of knowing for certain whether they were violating the law. Freight forwarders may be liable on account of failure to pay the regularly published tariff rates of common carriers by motor vehicle. Common carriers by motor vehicle may be subject to liability because of failure

to collect from freight forwarders their regularly published local rates. It is possible that shippers may also technically be subject to liabilities.

“This section relieves freight forwarders, common carriers by motor vehicle, and other persons from penalties and liabilities under the Interstate Commerce Act or any other Federal statute on account of anything done or omitted to be done, prior to the enactment of Part IV, in connection with the establishment, charging, collection, receipt, or payment of rates of freight forwarders, or joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to Part II.”

The report of the Senate Committee on Interstate Commerce (S. Rept. 132, 77th Cong., 1st Sess.) comments on the occasion for the passage of an act regulating freight forwarders, upon the uncertainty as to the propriety of the joint rates with motor carriers that freight forwarders had sought to publish, and upon the Commission's decisions, sustained by the Supreme Court, holding that freight forwarders were not subject to the 1935 act. Nothing was said about liability for past acts. S. 210 as introduced contained no paragraph equivalent to present Section 419.

The report of the conference committee (H. Rept. No. 2066, 77th Cong., 2nd Sess.) on S. 210 contains the following comment on Section 419:

“Section 419 of the House Amendment, because of the unsettled legal status of joint rate arrangements between common carriers by motor vehicle and freight forwarders since the decision of the Commission in the *Acme* case (docket MC-2200) in 1937, provided that no person should be subject to

any punishment or liability under the provisions of any Federal statute, on account of any act done or omitted to be done prior to the effective date of Part IV, in connection with the establishment, charging, collection, receipt, or payment of rates of freight forwarders, of joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to the Interstate Commerce Act. The Senate bill contained no such provision. Section 419 of the conference substitute is the same as the section passed by the House, except that it grants such immunity from punishment or liability under the provisions of the Interstate Commerce Act only. This change accords with the recommendation made by the Attorney General of the United States."

The foregoing statements from the committee reports plainly show a Congressional intent to limit the purpose and application of Section 419 to the precise situation clearly outlined in the reports. The narrowing of the scope of Section 419 by the conference committee, at the suggestion of the Attorney General, is significant in this connection. Also of some significance is the difference between the wording of the section in the House Bill as originally introduced and the wording as it now appears in the act. In H. R. 3684 the section (then numbered 418) reads as follows:

"No person shall be held to be subject to any criminal or civil liability under any provision of this Act on account of any act done or omitted to be done, prior to the effective date of this part, in connection with transportation which would have been transportation subject to this part if this part had been in effect at the time of such act or omission."

The foregoing language, although clearly intended to have the same meaning and purpose, is sufficiently general that it might be construed to afford broader immunity than can now possibly be claimed under the explicit provisions of Section 419.

The intention of Congress in enacting Section 419 was, it is overwhelmingly clear, to relieve forwarders and connecting carriers from a predicament in which they found themselves as a result of the decision in the *Acme* case invalidating the published tariffs naming the rates charged by forwarders to their patrons as well as the joint rates and divisions between forwarders and common carriers by motor vehicle subject to the act. This was as far as Section 419 was intended to go. There was not the slightest indication of a purpose to deprive the courts of jurisdiction of proceedings against forwarders arising out of other transactions, such as failure to pay the legally established rates of railroad companies. The purpose Congress had in mind was carried out in the wording of Section 419, and there is complete harmony between the plain, literal and natural meaning of the language there employed and the legislative history of the statute.

Conclusion.

While Section 419 is plain and unambiguous on its face and there is no need for resort to construction, reference to its legislative history demonstrates beyond the possibility of a doubt that it was not intended to deprive the courts of jurisdiction of suits to collect undercharges in the rates of railroads, whether filed against forwarders or other users of rail service, but that on the contrary it was enacted for the specifically limited purpose of affording relief from liability in connection with the establishment, collection, etc., of the rates charged by freight forwarders to their patrons and joint rates or divisions between freight forwarders and common carriers by motor vehicle subject to the Interstate Commerce Act.

Section 419 did not deprive the District Court of jurisdiction of the complaint in this case, and the Court properly entered judgment in favor of the appellee. The judgment should be affirmed.

Dated: October 28, 1944.

Respectfully submitted,

JONATHAN C. GIBSON,

WILLIAM F. BROOKS,

560 South Main Street, Los Angeles 13,

Attorneys for Appellee.

